

PUBLIC LAW BOARD NO. 7660

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES)		
DIVISION – IBT RAIL CONFERENCE)		
	) Case No. 244	
and)		
	)	
UNION PACIFIC RAILROAD COMPANY)		
SOUTHERN PACIFIC TRANSPORTATION COMPANY)		
(WESTERN LINES)])		

STATEMENT OF CLAIM

“Claim of the System Committee of the Brotherhood that:

1. The Carrier’s discipline (dismissal) imposed upon Mr. R. Webb by letter dated May 19, 2022, in connection with allegations that on March 5 and 25, 2022, he misused a Union Pacific account to purchase fuel for a personal vehicle in violation of Rule 1.6: Conduct – Dishonest and additionally, Rule 1.6: Conduct stipulates that any act of hostility, misconduct, or willful disregard or negligence affecting the interest of the company or its employees is cause for dismissal and must be reported and indifference to duty or to the performance of duty will not be tolerated, was imposed without the Carrier having met its burden of proof; was excessive, arbitrary, disparate; and in violation of the Agreement (System File M-2245S-505/1776203 SPW).
2. As a consequence of the violations referred to in Part 1 above, Claimant R. Webb shall now have the dismissal ‘. . . expunged from his personal record. Claimant be immediately reinstated to service and compensated for all wages lost, straight time and overtime, beginning with the day he was removed from service and ending with his reinstatement to service excluding all outside wage earnings. Claimant be compensated for any and all losses related to the loss of fringe benefits that can result from dismissal from service, i.e., Health benefits for himself and his dependents, Dental benefits for himself and his dependents, Vision benefits for himself and his dependents, Vacation benefits, Personal Leave benefits and all other benefits not specifically enumerated herein that are collectively bargained for him as an employee of the Union Pacific Railroad and a member of the Brotherhood of Maintenance of Way Employees Division of the “International Brotherhood of Teamsters. Claimant is to be reimbursed for all losses related to personal property that he has now which may be taken from him and his family because his income has been taken from him. Such losses can be his house, his car, his land, and any other personal items that may be garnished from him for lack of income related to this dismissal.’ (Employees’ Exhibit ‘A-2).”

FINDINGS

Upon the whole record, after hearing, this Board finds that the parties herein are Carrier and Employer within the meaning of the Railway Labor Act, as amended; that the Board has jurisdiction of the dispute herein, and that the parties to said dispute were given due notice of hearing in the matter and participated therein.

Robert Webb (the Claimant), at the time of his dismissal by the Carrier, held the job of Surfacing Foreman with ten years of service and no record of discipline. By letter dated April 13, 2022, he was requested to report for a hearing on May 3, 2022, to develop the facts and determine his responsibility, if any, in connection with the following charge:

On 04/07/2022, UPRR was notified that while employed as a Surfacing Foreman Class 01, you allegedly misused Union Pacific company account to purchase fuel for your personal vehicle on 03/5/2022 and 03/25/2022. This is a possible violation of the following rule(s) and/or policy:

1.6 Conduct - Dishonest

The April 13 letter added, “Under the MAPS Policy, this violation is a Dismissal event. Based upon your current status, if you are found to be in violation of this alleged charge, Dismissal may result.”

An investigative hearing was held in this matter on May 3, 2022, as scheduled. The Charging Officer, whose title is Manager of Track Maintenance, testified as follows. He supervises the Claimant. He identified a Freeway Texaco receipt dated March 5, 2022, 10:53 p.m. for a purchase of diesel fuel in the amount of \$169 on the Carrier’s account and signed by the Claimant with his gang number 7428 under his signature. Looking at the receipt, he saw that the purchase took place at 10:53 p.m., which is not regular hours of service for that gang. He decided to look into the matter. He went to the service station and viewed a video record of the particular purchase. It showed that the Claimant was putting fuel in his own vehicle. The time on the video was the same time as on the receipt.

The Charging Officer also identified a second receipt dated March 25, 2022, 2:34 p.m. for the purchase of fuel in the amount of \$137.04 on the Carrier’s account signed by the Claimant, followed by his gang number 7428, although, the Charging Officer testified, the Claimant was no longer working for him and had been released to the tie gang. The fuel purchases were not made with a credit card or a gas card but on an account that the Carrier has with the Texaco station. The Charging Officer testified that he also viewed a video of the March 25 purchase but that he did not have a snapshot of that video. He stated that the video was in the possession of the Claims Department.

The Claimant testified as follows in response to questions from the hearing officer. Before being assigned to the tie gang he worked for gang No. 7428. March 5, 2022, was his day off. He was

called about 11:45 a.m. to go to a service interruption caused by a broken rail. He worked five hours. He rode over to the site of the repair in a gang truck, not his personal truck. On March 5, at 10:53 p.m. he put fuel in his own pick-up truck while not on duty, using a Union Pacific account for the purchase. He put his gang number under his signature on the receipt. He also used a Union Pacific account for a fuel purchase for his own vehicle on March 25, 2022. He identified his signature followed by the number 7428 on the receipt for that purchase. At the time of the purchase he was assigned to the tie gang, not gang 7428. He does not know the tie gang's number. He acknowledged that he is not authorized to put fuel in his personal vehicle using a Union Pacific account. He had no reason to put fuel into his personal vehicle on a UP account.

In response to questions from the Organization representative, the Claimant testified as follows. He used the Texaco station as a fuel station for both Union Pacific vehicles and his own vehicle. He has his own account at the station apart from the Union Pacific account. He pays the charges on his personal account monthly. The station attendant comes out before he begins pumping fuel and asks what account. He tells her Webb Welding Machinery. With regard to the fuel purchases represented by the March 5 and March 25 receipts, he did not tell the attendant to charge the purchases to the UP account. He does not know why they were charged to the UP account. There have been new clerks in and out of there. He has had his personal account at that station for about a year and a half or two. UP's account has also been there for about the same length of time. He helped bring it there.

He has always verified the purchases charged to the account [his testimony continued], usually the first week of the following month. His verification procedure is to get all of the receipts out of the truck and match them against the charges. He then pays the account. He follows the same procedure for his personal account. However, he was not the one who paid the bill in April for the March, 2022, fuel purchases. It was not his intent to charge the UP account for his personal fuel purchases on March 5 and 25, 2022. Nor did he pay the bill for those charges. He believes that if he were the one that paid the bill for the March purchases, he would have caught the error in matching the receipts against the charges on the gas station's bill for the March fuel purchases. Had the improper charges been brought to his attention, he would have been willing to reimburse the Carrier for them. He is still willing to reimburse the company.

Asked if he was familiar with any other similar transaction as the fuel purchases here in issue, he gave an example of an employee who mistakenly charged a \$300 fuel purchase to the UP account for gang 7428. In that case, however, the purchase was not made for the employee's personal vehicle, but for a company vehicle. The employee had merely charged the purchase to the wrong company account.

In response to additional questions from the hearing officer, the Claimant gave testimony as follows. He was in charge of verifying the fuel charges. When he went to the tie gang, he was no longer doing this. But he talked to the manager of gang 7428 (i.e., the Charging Officer) about still taking care of the charges at the beginning of every month. The Charging Officer did the verification for the March fuel purchases. Although the fuel purchases in question were for his personal vehicle, he

put his gang number 7428 under his signature out of habit. He does that on his account sometimes. Asked whether he had ever told his manager, the Charging Officer, that he had charged the company account twice by error, the Claimant stated, "I knew for sure of the one on the 25th, because that's when I actually knew when I put fuel in." In a follow-up he was asked, "And you still didn't approach [your manager] and let him know." He answered, "I did."

At this point the hearing officer recalled the Charging Officer for additional questions, and he testified as follows. The Claimant verified the fuel charges and paid them each month. He (the Charging Officer) would then approve his credit card. The Claimant did not come and tell him that he accidentally used the Carrier account for his personal vehicle on March 25 or March 5. He discovered the misuse when, in going through the receipts, he noticed the late hour of the fuel purchase on one of the receipts.

In response to questions by the Organization representative, the Charging Officer further testified as follows. On the day that the Claimant was pulled out of service, he and another manager brought him in and talked to him about the two purchases. "[H]e knew the two dates as soon as we told him why he was in investigation." They told him why he was getting pulled out of service pending investigation on the receipts. They did not show him the receipts. The Charging Officer was asked, ". . . [C]an you explain to me exactly how [Claimant] was dishonest when he was not made aware of the charges until . . . after he was pulled out of service." He answered, "Whenever we called him to let him know about why he was getting pulled out of service, again, he mentioned those two days, that he forgot to let me know, and that he was going to correct it."

It is the position of the Carrier that it properly dismissed the Claimant from its employment for two acts of dishonesty wherein he purchased fuel for his personal vehicle using a company account with the fueling station. These were not isolated incidents, the Carrier asserts, but two separate events 20 days apart using Carrier funds for personal benefit. He signed his name on the receipts for the purchases with a gang number, the Carrier notes, which it interprets as an attempt to legitimize the transactions and conceal the misuse. The fact that Claimant was a supervisory employee trusted with access to a company account, the Carrier argues, heightened the seriousness of the offense. The Claimant's suggestions that new clerks may have mistakenly charged the fuel to the Carrier's account, the Carrier asserts, is undermined by his signature and gang number on the receipts and by his admissions. His claim that he was not given the opportunity to correct his use of the company account for the purchases must be judged, in the Carrier's view, in light of the facts that he never reported the transactions or attempted to reimburse the Carrier for them until after disciplinary proceedings had begun. The Claimant's actions were dishonest, the Carrier contends, and destroyed the trust essential for the employer=employee relationship. He was properly dismissed, the Carrier maintains, under the Carrier's rules and policies that make dishonesty a dismissible offense. The Carrier requests the Board to uphold the assessed discipline.

The Organization argues that the Carrier did not meet its burden of proof in this case because it did not introduce into evidence at the hearing a copy of the rule that the Claimant is charged with

having violated. In addition, the Organization argues, the standard of proof where dishonesty is charged is clear and convincing evidence of alleged misconduct since the allegation implies an element of moral turpitude or even criminal liability. In the present case, the Organization contends, “the Carrier has presented absolutely no evidence to indicate there was any intent by the claimant to be dishonest and steal from the Carrier at all.” Instead, the Organization maintains, what occurred here was that the Claimant, who has a personal account at the same fueling station, inadvertently charged the purchases to the Carrier’s account instead of his own. It cites the Claimant’s testimony that the error would have been caught while reconciling the receipts against the billing statement, but that he was not given the opportunity to do so.

The Organization points out that the Carrier’s fuel policy, in the part that states that an employee is not allowed to use a company fuel card to make personal purchases, also states, “If the fuel card is inadvertently used for any personal purchases, the employee must reimburse the company using the Reimbursement Form on the Visa Purchasing Card Resources page of the Finance section of the UP intranet.” It argues that the Carrier arbitrarily refused to allow the Claimant an opportunity to avail himself of this provision of its fuel policy. In denying the Claimant the opportunity to reimburse the Carrier, the Association contends, the Carrier did not apply its fuel policy evenhandedly, with the result that the Claimant was dismissed without the Carrier having met its burden of proof and without just cause.

The Organization notes that Claimant is a ten-year employee with no record of prior discipline and argues that dismissal in this case based on the evidence presented was unduly harsh, excessive, and an abuse of the Carrier’s managerial discretion. It asserts that corrective and progressive discipline are fundamental in this industry and that this principle is also reflected in the Carrier’s MAPS Policy. It requests the Board to overturn the Claimant’s dismissal and provide the remedy requested in the claim.

The Board has reviewed the on-property correspondence between the parties in this case, and finds no indication that the Organization’s procedural argument -- that a copy of the rule that the Claimant is charged with having violated was not introduced into evidence during the investigation -- was made on the property. That in itself would be a sufficient basis for rejecting the argument. However, the Board notes that the portion of the rule that notifies the Claimant that he was being charged with dishonesty was introduced into evidence by way of its quotation in the charge letter. In addition, Elkouri & Elkouri, How Arbitration Works (Sixth Edition, Alan Miles Ruben Editor-in-Chief, 2003) 992 observes, “. . . [W]here the conduct was clearly wrong, it has been held that employees need not be notified of rules.”

The evidence that on two occasions in the same month, less than three weeks apart, the Claimant purchased fuel totaling in excess of \$300 for his own vehicle using a company account to pay for the fuel and signed for the purchases using his company gang number calls for a convincing explanation to avoid being accused of theft in connection with the purchases. The Claimant has failed to provide one. He testified, in response to questions by the Organization representative, that for each of the purchases the station attendant asked him what account, he told her Webb Welding Machinery,

but she mistakenly charged the purchase to the Carrier. No explanation was provided of why the attendant associated him with Union Pacific. He suggested that the mistake was made because the attendant was new. If so, how would she know that he worked for Union Pacific and sometimes fueled their vehicles at that station? That this same scenario should take place twice less than three weeks apart is most unusual.

Another difficulty is that printed on the receipt that the Claimant signed, immediately above the words "I AGREE TO PAY ABOVE TOTAL AMOUNT" followed by the Claimant's signature, were the words, in caps, "ACCOUNT UPRR." Thus the station itself, in an effort to prevent an erroneous payment of the kind the Claimant contends occurred in this case, identifies the account that the purchaser is signing for, in this case UPRR, Union Pacific Rail Road. To credit the Claimant's explanation, one would have to believe that twice within three works he signed for fuel purchases in excess of \$100 each believing that he was charging the purchase to his own account although, directly above his signature, the receipt stated that the charge was for the account of UPRR. The Claimant testified that he put the number 7428 after his signature by habit, stating that he did this sometimes. However, although such evidence would have been important support for his story, the Claimant and the Organization did not produce any example of a receipt for a fuel purchase for the Claimant's personal account where he placed his gang number after his signature.

A serious difficulty in the Claimant's case is his failure to attempt to reimburse the Carrier for the two fuel purchases by him for his personal vehicle that he charged to the Carrier although he admitted to his manager, the Charging Officer, that he was aware of the two fuel purchases improperly charged to the company account, claiming that he forgot to let his manager know and that he was going to correct it. This testimony was given by the Charging Officer in the Claimant's presence, and Claimant made no effort to challenge that testimony. The Board accepts that testimony as true. It is not believable that Claimant mistakenly charged the two gas purchases to the company account, later discovered what he had done, but nevertheless made no effort for a substantial period of time either to inform his manager of the two allegedly mistaken misuses of the Carrier's fuel account or to reimburse the company the amount of the purchases until he faced discipline for his actions. Any innocent person with ten years of service with the company would know that use by them of a company fuel account for diesel purchases for one's own vehicle would, if found out, result in immediate suspicion of theft and make every effort to rectify the misuse as soon as possible. The fact that Claimant made no such effort with regard to two such purchases, three weeks apart, in the same month, reflects poorly on his innocence.

The Board concludes that the record contains sufficiently cogent evidence to establish to its satisfaction that the Claimant intentionally used the company's account with a fuel station to purchase fuel for his own vehicle on March 5 and 25, 2022, in violation of the company fuel policy and without intention to reimburse the Carrier for these purchases. This constituted dishonesty, as charged, in the form of theft, and was grounds under company policy and industry practice, generally, for his discharge. The Claimant betrayed the trust placed in him by making him foreman and the loyalty that is inherent in the employer/employee relationship. In its submission the Carrier has cited multiple

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awards which hold that long service and clean work records do not insulate employees from dismissal for acts of theft or other forms of dishonesty. See, for example, Third Division Award 25042 (Referee Vaughn), Third Division Award 24699 (Referee Schoonover), PLB No. 7660, Awards Nos. 87, 88, 93, and 95. The claim will be denied.

A W A R D

Claim denied.

<u>/s/ Sinclair Kossoff</u>	<u>9/15/2025</u>
Sinclair Kossoff, Neutral Member	Date

<u>Jennifer McNeil</u>	<u>October 6, 2025</u>
Jennifer McNeil, Carrier Member	Date

<u></u>	<u>October 6, 2025</u>
John Schlismann, Organization Member	Date